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August 28, 2007

Via Electronic and US Mail

Public Utility Commission
Attn: Filing Center
550 Capitol St. NE #215
P.O. Box 2148
Salem OR 97308-2148

Re: In the Matter of PORTLAND GENERAL ELECTRIC COMPANY 2008 Annual
Power Cost Update Tariff Filing
Docket No. UE 192

Dear Filing Center:

Enclosed please find the original and six copies of the Opening Brief of the Industrial Customers of Northwest Utilities in the above-referenced docket.

Please return one file-stamped copy of the document in the self-addressed, stamped envelope provided. Thank you for your assistance.

Sincerely yours,

/s/ Ruth A. Miller
Ruth A. Miller

Enclosures

cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Opening Brief of the Industrial Customers of Northwest Utilities upon the parties, on the service list, by causing the same to be deposited in the U.S. Mail, postage-prepaid, and/or via electronic mail to those parties who waived paper service in this proceeding.

Dated at Portland, Oregon, this 28th day of August, 2007.

/s/ Ruth A. Miller
Ruth A. Miller

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 192

In the Matter of)	
)	
PORTLAND GENERAL ELECTRIC)	OPENING BRIEF OF THE INDUSTRIAL
COMPANY)	CUSTOMERS OF NORTHWEST
)	UTILITIES
)	
2008 Annual Power Cost Update Tariff)	
Filing.)	
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INTRODUCTION

The Industrial Customers of Northwest Utilities (“ICNU”) requests that the Public Utility Commission of Oregon adjust Portland General Electric Company’s (“PGE” or the “Company”) 2008 net variable power cost (“NVPC”) forecast to reflect the extrinsic value of the Company’s “cold snap” capacity contract. The Commission found in PGE’s last rate case that NVPC should reflect the extrinsic value of the Company’s super peak and cold snap capacity contracts rather than the fixed costs, but decided that the record lacked sufficient evidence to order an adjustment for the cold snap. ICNU has provided in this Docket the evidence necessary for the Commission to implement its decision in UE 180 regarding the cold snap contract. Adopting ICNU’s proposed adjustment would reduce the 2008 NVPC forecast by the amount stated in ICNU/102, RJF/1.^{1/}

PGE’s and Staff’s arguments in favor of including the cold snap contract’s full fixed costs in NVPC turn traditional ratemaking on its head. PGE and Staff argue that PGE

^{1/} In order to preserve the confidentiality of the information in this Docket, ICNU will refrain from stating the exact dollar amount in this Opening Brief.

should recover the full contract costs because the Commission determined in UE 180 that the contract has no extrinsic value and does not otherwise provide power to customers. In other words, PGE should fully recover the cold snap costs because the contract is so uneconomic that it has no value, it provides no power, and it benefits shareholders only. This argument undermines the Commission's reasons for recognizing the capacity contracts' extrinsic value in power costs and treats the cold snap contract more favorably than the super peak, which was partially disallowed in UE 180 based on the demonstration of its extrinsic value. The Commission did not resolve the cold snap contract's extrinsic value in UE 180, and it should reject attempts to use the UE 180 order to preclude evidence on that subject in this proceeding.

ARGUMENT

A. The Commission Unequivocally Concluded in UE 180 that the Extrinsic Value of PGE's Capacity Tolling Contracts Should be Included in Rates

The dispute regarding the appropriate treatment of PGE's capacity tolling agreements began in the 2005 resource valuation mechanism ("RVM") annual update proceeding, but the Commission only recently ruled on the issue in UE 180. PGE first included the super peak and cold snap contracts in NVPC in the November 2004 MONET run that occurred after the record closed in the 2005 RVM. At that time, PGE sought to include \$2.2 million in rates for the two agreements despite the fact that neither agreement was expected to dispatch during 2005. Staff requested that the Commission disallow the contracts, stating "that the ratemaking treatment implied in PGE's November 3rd draft MONET run creates a significant mismatch between ratepayer costs and benefits" because "the only benefit that customers could possibly receive is if an extreme price event occurs" and the OPUC authorizes a deferred account to capture that benefit. Letter from David B. Hatton, Assistant Attorney General, to Traci

Kirkpatrick, OPUC Administrative Law Judge, Nov. 5, 2004. The ALJ convened a prehearing conference to discuss the issue and, after a lengthy off-the-record debate amongst the parties, Staff ultimately opted not to pursue the disallowance in the 2005 proceeding. Re PGE, OPUC Docket No. UE 161, Prehearing Conference Memorandum (Nov. 16, 2004). Staff, ICNU, and CUB raised the issue again in the 2006 RVM update, but the parties resolved the issue in a stipulation, and the Commission did not decide the appropriate treatment of the agreements. Re PGE, OPUC Docket No UE 172, Order No. 05-1140 at 2-3 (Oct. 25, 2005).

The Commission did not directly address the appropriate treatment of the capacity tolling agreements until earlier this year in PGE's general rate case (UE 180), and the 2007 RVM update. In these proceedings, ICNU, Staff, and CUB proposed adjustments to account for the extrinsic value of PGE's capacity resources, including the capacity tolling agreements. OPUC Docket No. UE 180/UE 181/UE 184, ICNU/103, Falkenberg/4-8; Staff/200, Wordley/9; CUB/100, Jenks-Brown/10-12. In addition, ICNU proposed, in the alternative, that if the Commission rejected a comprehensive extrinsic value adjustment, it should impute the extrinsic value of the super peak contract because it was not expected to dispatch in the test year. OPUC Docket No. UE 180/UE 181/UE 184, ICNU/103, Falkenberg/20. The Commission declined to adopt a comprehensive extrinsic value adjustment but accepted the alternative proposal to impute the extrinsic value of the capacity tolling agreements:

We agree that the costs of the contracts should be included in PGE's test year power costs. The contracts assure supply for peak loads and emergency events, and therefore provide service to customers. For this reason, we include both contracts in rates. However, even though we reject an overall extrinsic value adjustment for PGE's resources, *we believe the extrinsic value of these two contracts should be recognized in test year power costs.* The Super Peak and Cold Snap contracts can be distinguished from

the Company's other resources because they do not dispatch at all in the MONET run used to estimate test year power costs. Without an extrinsic value adjustment, customer rates would include all of the costs, and none of the benefits of the contracts. *The record contains evidence on the extrinsic value of the Super Peak contract, but not the Cold Snap contract.* Therefore, we accept ICNU's alternative proposal to include the extrinsic value of the Super Peak contract in rates, and adjust PGE's proposed test year power costs by \$1.4 million.

Re PGE, OPUC Docket No. UE 180/UE 181/UE 184, Order No. 07-015 at 13 (Jan. 12, 2007)

(emphasis added). As explained below, ICNU has provided evidence in this case to implement the Commission's conclusion that the cold snap contract's extrinsic value should be reflected in power costs. PGE and Staff, on the other hand, urge the Commission to ignore the evidence and continue forcing customers to pay for all of the costs of the contract while depriving them of any benefit. The Commission acknowledged the inequity of this result in UE 180 and should not perpetuate it here.

B. ICNU Has Provided the Evidence that the Commission Lacked to Order an Adjustment for the Cold Snap Contract in UE 180

The facts surrounding the cost and dispatch of the cold snap contract for 2008 are no different than for the 2007 test year in UE 180/UE 181. The contract's fixed costs are roughly the same, the contract has not dispatched in previous years, and it is not expected to dispatch in 2008. The evidence surrounding the extrinsic value of the contract, however, is different. In UE 180, ICNU presented testimony based on the current information at that time that the cold snap agreement had no extrinsic value. OPUC Docket No. UE 180, ICNU/103, Falkenberg/18-19. According to PGE, Staff presented similar evidence. PGE/300, Tooman-Tinker-Schue/10. The UE 180 order plainly demonstrates that the Commission rejected this

evidence, finding that the record lacked sufficient information to justify imputing the cold snap extrinsic value. OPUC Docket No. UE 180/UE 181/UE 184, Order No. 07-015 at 13.

In this Docket, ICNU has provided the evidence that the Commission lacked in UE 180. ICNU witness Randy Falkenberg developed his cold snap adjustment by applying “the model and data that PGE used to determine the extrinsic value for the Super Peak contract and adjust[ing] the inputs to reflect the Cold Snap contract.” ICNU/100, RJF/8. In doing so, Mr. Falkenberg replicated the analysis that produced the Commission’s adjustment for the super peak contract in UE 180, because PGE’s analysis of the super peak was the basis for the adjustment. Using the PGE analysis with the cold snap inputs, Mr. Falkenberg developed historical price spreads at the cold snap heat rate for the months when the contract is available and then adjusted these spreads to reflect the market prices at the time that PGE negotiated the contracts. Id. As explained in more detail in the next section, this adjustment creates a critical difference from Mr. Falkenberg’s analysis of the cold snap contract in UE 180, which was based on information that was current at the time of UE 180. See Id. The adjusted price spreads reflected the spreads that PGE expected when negotiating the contract, and this data provided daily extrinsic values for the agreement. Id. Mr. Falkenberg used data from the same 1997 to 2001 time period that PGE used in its super peak analysis to compute a daily average extrinsic value for that period. He then calculated a monthly demand charge for the contract based on expectations for 2008. Id.

The 2008 test year extrinsic value that Mr. Falkenberg calculated for the cold snap contract exceeds the agreement’s demand charge. Id. As a result, Mr. Falkenberg testified that imputing the full cold snap extrinsic value (as the Commission did for the super peak contract in UE 180) would unfairly advantage customers. Id. at RJF/9. Mr. Falkenberg recommended that

the Commission adopt an extrinsic value adjustment for the cold snap contract under these circumstances, but limit the adjustment to the contract demand charge. Id.

C. The UE 180 Order Invites Evidence Regarding the Cold Snap Contract's Extrinsic Value Rather Than Precluding It

PGE and Staff argue that: 1) the evidence in UE 180 demonstrates that the cold snap contract had no extrinsic value; and 2) the Commission resolved the issue of the cold snap extrinsic value in that case. PGE/300, Tooman-Tinker-Schue/10-11; Staff/100, Galbraith/3. These parties essentially argue that the UE 180 order precludes ICNU from providing evidence regarding the cold snap extrinsic value in this case. Staff and PGE ignore the plain language of the UE 180 order as well as the differences in the evidence that ICNU presents here.

1. The Commission Did Not Make Any Finding Regarding the Cold Snap Contract's Extrinsic Value in UE 180

The UE 180 order flatly contradicts Staff and PGE's argument that the Commission "resolved the issue of the extrinsic value of the Cold Snap contract" based on the evidence in UE 180. Staff/100, Galbraith/3; PGE/300, Tooman-Tinker-Schue/10. The Commission unequivocally stated in the order that the record "contains evidence on the extrinsic value of the Super Peak contract, but not the Cold Snap contract." OPUC Docket No. UE 180/UE 181/UE 184, Order No. 07-015 at 13. The suggestion by Staff and PGE that the Commission determined the cold snap contract's extrinsic value is completely inconsistent with this finding. The Commission's only definitive conclusion with respect to the cold snap contract in the UE 180 order is that the agreement's extrinsic value is the appropriate amount to include in rates. Id. ICNU is providing that value in this proceeding.

2. PGE and Staff Ignore the Distinction in the Evidence that ICNU Presents in this Proceeding

PGE and Staff also urge the Commission to disregard ICNU's evidence because ICNU presented evidence in UE 180 that the cold snap contract had no extrinsic value. Id.; PGE/100, Tooman-Tinker-Schue/11. This argument ignores that ICNU's evidence in this case is substantively different from the evidence presented in UE 180 as a result of the Commission's guidance in UE 180. First, as described above, Mr. Falkenberg's adjustment for the cold snap contract replicates the super peak contract adjustment adopted in UE 180; he simply substituted the cold snap contract inputs. ICNU/100, RJF/8. This evidence was not in the record in UE 180 and ignoring his analysis in this proceeding would result in very different treatment of similar resources.

Second, Mr. Falkenberg's extrinsic value analysis of the cold snap contract in UE 180 was based on information that was *current* at the time of UE 180. Id. In this proceeding, however, Mr. Falkenberg used PGE's analysis of the super peak contract as the basis for his adjustment, and this analysis reflects the Company's expectations at the time *it negotiated* the cold snap agreement. Id. Using this analysis indicates that the contract has positive extrinsic value. Id. Given that, when executed, PGE expected to dispatch the cold snap contract very seldomly, a positive extrinsic value based on analysis performed when the agreement was signed essentially is the only means to justify the agreement from a prudence perspective. Id. at RJF/9.

PGE is adamant that the Commission determined in UE 180 that the cold snap contract lacks any extrinsic value. ICNU/204 at 1 ("PGE believes that no extrinsic value adjustment should be made because in Docket UE 180 the Commission determined, based on the evidence presented, that the Cold Snap has zero extrinsic value") Accepting this

assumption as true, there is no basis under the UE 180 order to include any of the contract costs in rates. PGE cannot credibly dispute the Commission's conclusion that the extrinsic value of the cold snap contract is the appropriate amount to recognize in rates. OPUC Docket No. UE 180/UE 181/UE 184, Order No. 07-015 at 13. The Company effectively argues that the Commission must continue to authorize full cost recovery of a resource with no economic or power supply value simply because the Commission lacked an adequate record to order a disallowance in a previous case. This argument imposes additional costs on customers based on an arbitrary and improper prohibition on presenting additional evidence on an unresolved issue. Furthermore, this argument turns ratemaking on its head because it assures full cost recovery of a resource with no extrinsic value when the Commission already has partially disallowed the cost of a similar resource (the super peak contract) based on its proven extrinsic value. The Commission's decision on this issue should not rest on arbitrary preclusion of evidence and contorted logic.

D. PGE's Criticisms Ignore that ICNU Replicated the Company's Extrinsic Value Analysis of the Super Peak Contract

PGE asserts a variety of unfounded and misleading criticisms of ICNU's evidence. The Commission should not be swayed by PGE's attempt to obscure the issue.

1. ICNU's Analysis Relies on the Same Data from 1997 to 2001 that PGE Used to Evaluate the Super Peak Contract

PGE urges the Commission to reject ICNU's extrinsic value analysis because it utilizes data from 1997-2001, and the end result allegedly is "driven entirely" by high power prices during the 2000-2001 energy crisis. PGE/300, Tooman-Tinker-Schue/12. According to PGE, the energy crisis "was an unusual event and should not be the basis for an adjustment." Id.

PGE ignores that ICNU's evidence in this proceeding was derived from the same analysis that PGE performed for the super peak contract and that the Commission accepted for its super peak contract adjustment in UE 180. Indeed, the Commission has already rejected PGE's request that data spanning the 2000-2001 energy crisis should not be the basis for an adjustment because the adjustment for the super peak contract was based on analysis using data from that period. Moreover, any flaws that PGE perceives with ICNU's data selection stem from the Company's initial use of that same data. Any impacts that result from the particular data that ICNU used are present in the super peak contract analysis as well. PGE's complaint about the data that ICNU used falls flat because the Company used the very same data to justify the super peak contract based on its extrinsic value.

Regardless of the consistency in PGE's perspective on using 2000-2001 data, PGE's responses to ICNU's data requests demonstrate that the Company's testimony fails to tell the entire story about ICNU's data. PGE acknowledges that ICNU adjusted the 2000-2001 price data to reflect the Federal Energy Regulatory Commission's imposition of price caps during this period. ICNU/200 at 1 ("ICNU includes a price cap and some sort of downward adjustment."). Furthermore, PGE admits that it did not compare ICNU's data with the Company's own analysis of the super peak contract to determine the similarity. ICNU/200 at 1. In other words, it appears that PGE's criticisms were formed without scrutinizing the ICNU workpapers supporting the cold snap analysis because the data and assumptions reflected in those workpapers reflect PGE's own extrinsic value analysis.

2. PGE's Complaint About Cold Snap's Maximum Take Provision is a Red-Herring

PGE maintains that the Commission should not rely on ICNU's analysis because it fails to account for the limitations imposed by the cold snap contract's "maximum 'take'" provision. PGE/300, Tooman-Tinker-Schue/14. According to PGE, this omission caused the contract to dispatch in ICNU's analysis more than the number of hours that the contract permits. Id. PGE's responses to ICNU's data requests demonstrate that the Company once again fails to tell the whole story.

PGE's argument is a complete red-herring. ICNU proposes to limit the adjustment for the cold snap contract to the contract demand charge because the extrinsic value of the agreement exceeds that demand charge. ICNU/100, RJF/8-9. PGE's response to an ICNU data request demonstrates that even when the maximum take provision is imposed in ICNU's analysis, the extrinsic value for the agreement still exceeds the contract demand charge. ICNU/205 at 1, 4. In other words, PGE's claim about needing to account for the maximum take provision does not affect the end result of ICNU's proposed adjustment whatsoever.

The confusion about how to account for the maximum take provision can be attributed to ICNU's adherence to PGE's analysis of the super peak contract as the basis for its adjustment. In response to a data request, PGE explained that it would "account" for the maximum take provision by first allowing the contract to dispatch against the Monet forward curves and, if the "preliminary" dispatch does not exceed the maximum take, then the Company's forecast is complete. ICNU/202 at 1. If the preliminary dispatch exceeded the maximum take, PGE would "augment" Monet to account for the maximum take provision. Id. Although PGE's process sounds good in concept, it has no practical effect in reality. Because

the spread in the capacity tolling agreements is so large, Monet has never predicted the agreement to dispatch against market prices, much less exceed the maximum take. As a result, PGE has never had to “augment” Monet to perform the second step and PGE’s analysis does not reflect any such action. Even if PGE’s analysis had reflected this adjustment, however, it still would make no difference to ICNU’s proposed adjustment.

E. Postponing a Cold Snap Contract Adjustment Pending a Commission Investigation Indefinitely Prolongs the Acknowledged Mismatch of Costs and Benefits

Staff urges the Commission to postpone any further adjustments to account for the extrinsic value of PGE’s resources until after the parties have had an opportunity to comment in the upcoming stochastic modeling investigation. Staff/100, Galbraith/2. Staff’s position on the cold snap contract is curious. As described above, Staff initially championed the disallowance of the capacity tolling agreements altogether, making the extraordinary request in the 2005 RVM update docket that the Commission address the issue after the record had closed. Letter from David D. Hatton, Assistant Attorney General, to Traci Kirkpatrick, OPUC Administrative Law Judge, Nov. 5, 2004. Staff argued in that proceeding and subsequent cases that the contracts resulted in a mismatch of costs and benefits for customers. Staff ultimately recommended in UE 180/UE 181 that the Commission adopt a comprehensive extrinsic value adjustment to account for all PGE’s capacity resources. Now, however, after arguing for years that customers bear all the costs of PGE’s capacity contracts but receive no benefit, Staff proposes that the Commission prolong this cost/benefit mismatch until after an investigation that could last for years and has an entirely uncertain outcome. Indeed, PGE opposed the recommendation in UE 180 to pursue expected value power cost modeling. See OPUC Docket No. UE 180/UE 181/UE 184, PGE/1900, Tinker-Schue-Drennan/13. This unexplained change in position comes at a time

when the Commission's position on the capacity contracts is unambiguous. OPUC Docket No. UE 180/UE 181/UE 184, Order No. 07-015 at 13 ("[W]e believe the extrinsic value of these two contracts should be recognized in test year power costs."). Customers should not continue to be forced to bear the burden of an acknowledged mismatch in costs and benefits pending the uncertain outcome of an investigation that PGE opposes. Setting rates that include the full cost of the cold snap contract without recognizing any benefits of the contract results in rates that are not fair, just, and reasonable.

CONCLUSION

Customers bear all of the cost of PGE's cold snap capacity agreement under the current ratemaking scenario and receive no benefit from the contract. The Commission should address this mismatch by implementing its decision in UE 180 and recognizing the extrinsic value of the contract in PGE's 2008 power cost forecast.

Dated this 28th day of August, 2007.

Respectfully submitted,

/s/ Melinda J. Davison

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